

**STATE OF SOUTH CAROLINA
DEPARTMENT OF INSURANCE**

Lorraine Maddox,)	
)	SCDI DOCKET NO. 2003-15
Petitioner,)	
)	
v.)	ORDER OF DISMISSAL
)	
Primax Recoveries, Inc., and Cigna)	
HealthCare of South Carolina, Inc.,)	
)	
Respondents.)	
_____)	

This matter is before me pursuant to two petitions filed by Lorraine Maddox, seeking disallowance of subrogation pursuant to S.C. Code Ann. § 38-71-190 (2000). Maddox filed the first petition on December 10, 2003, naming Primax Recoveries, Inc. as the respondent. On December 30, 2003, she filed a second petition, naming Cigna HealthCare as the respondent. Primax moved to dismiss the petition in the first case. The director appointed me to act as the hearing officer in both cases.

It appears that both petitions relate to an employee welfare benefit plan, as defined by the Employee Retirement Income Security Act of 1974 (ERISA), sponsored by Maddox's employer, BMW Manufacturing Corporation. The attorney for the respondents asserts in correspondence to the Department that Cigna is a plan administrator, and Primax is a plan fiduciary authorized to sue on behalf of the plan in subrogation matters. Maddox has not contested this assertion.

Because both petitions relate to the same facts and involve the same ERISA plan, I hereby consolidate the two petitions for decision.

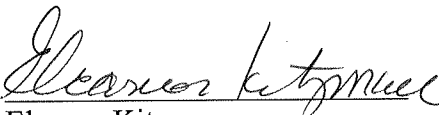
The respondents' attorney submitted a copy of the summary plan description for the plan at issue, which paid the benefits to Maddox that the plan seeks to recover through subrogation. That document states that "all benefits are provided by the Plan Sponsor." The Plan Sponsor is BMW Manufacturing Corporation.

Under S.C. Code Ann. § 38-71-190, the Department of Insurance has jurisdiction to determine an *insured's* petition for disallowance of subrogation by an *insurer* seeking to recover "benefits that the insurer has paid previously in relation to the insured's injury by the liable third party." *Id.* The Department has no jurisdiction to decide subrogation claims not involving an insurer and an insured.

The BMW Manufacturing ERISA plan is self-funded. BMW is not an insurer. BMW, and not an insurer, paid benefits to Maddox. Accordingly, Section 38-71-190 is inapplicable and the Department has no jurisdiction.

Primax argues that ERISA preempts Section 38-71-190, and Maddox argues that it does not. This issue, however, is irrelevant. In either case, whether or not ERISA preempts the statute, the statute does not confer jurisdiction on the Department to decide this issue.

Accordingly, the petitions are dismissed.


Eleanor Kitzman
Director of Insurance

Columbia, South Carolina

Nov. 25, 2005